IN THE SUPREME COURT
OF THE UNITED STATES

LOUIS S. KALMAR, SR.,	:	
	:	
Petitioner	:	
	:	
	:	UNITED STATES SUPREME
VS.	:	COURT NO. 82-878
	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent	:	

PETITIONER'S MOTION FOR
WAIVER OF TIME REQUIREMENT
OF SUPREME COURT RULE 20.1

LOUIS S. KALMAR, SR., petitioner in the above captioned case, hereby moves, pursuant to the authority of Schacht vs. United States, 398 U.S. 58 (1970) and other authorities cited herein, for an order waiving the time requirement of United States Supreme Court Rule 20.1 for petitions for certiorari to review judgments in a criminal case, and in support thereof states:

1. The Petition for Writ of Certiorari filed by petitioner was received at the guard station of the United States Supreme Court at 12:23 a.m. on November 24, 1982.

2. The Clerk of the United States Supreme Court has docketed the Petition for Certiorari as having been filed on November 24, 1982.

3. The last day for filing the Petition for Writ of Certiorari in this action, under Rule 20.1 of the Supreme Court was November 23, 1982 and, accordingly, the Petition for Certiorari was one day out of time and, specifically, delivered to the Supreme Court approximately 23 minutes late.

4. By this motion, petitioner seeks a waiver of Rule 20.1 and in support thereof assigns the following reasons and grounds:

a. Attached hereto as Exhibit "A" is the affidavit of counsel setting forth the reasons that the Petition was delivered 23 minutes late to the United States Supreme Court.

These reasons, in the summary, are that Pennsylvania Appellate Printing Company, Inc., the printer of the Petition, had arranged with BND Courier Systems to deliver the Petition on November 23, 1982. The Petition was to be hand delivered by a messenger. The messenger's truck broke down near the Baltimore Harbor Tunnel and delay ensued while the truck was repaired. The failure to deliver the Petition in time was due to this mechanical breakdown.

b. Likewise attached to Exhibit "A" is a copy of the "Proof of Service" of service of copies of the Petition for Writ of Certiorari upon, inter alia, the Solicitor General of the United States which reflects that copies of the Petition were mailed, first class mail, on November 23, 1982.

c. Had the Petition for Writ of Certiorari been likewise mailed to the United States Supreme Court on November 23, 1982, as were the service copies, the Petition would have been timely filed pursuant to Supreme Court Rule 28.2 which allows for timely filing as of the date of mailing.

d. Had the Petition been mailed on November 23, 1982 it would not have been received by the Clerk of the United States Supreme Court any earlier than November 24, 1982 and, in all liklihood not until November 26, 1982 since Thursday, November 25, 1982 was Thanksgiving Day, a legal holiday.

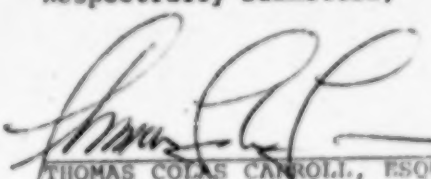
e. Petitioner seeks a waiver of the time limitations under the authority of Sanabria vs. United States, 437 U.S. 54, 62, FN. 12 (1978) and Schacht vs. United States, 398 U.S. 58 (1970), both of which hold that the United States Supreme Court may waive its own requirement that Petitions for Certiorari in criminal cases be filed within a specified number of days of judgment.

f. Petitioner believes, and therefore avers, that the affidavit attached hereto presents facts showing that petitioner has acted in good faith and that the delay in filing the Petition for Certiorari was brough about by circumstances largely

beyond his control and, in any event, the one day lateness in filing the Petition has caused no prejudice to any party.

WHEREFORE, petitioner, by his counsel, hereby moves for an Order waiving the time limitation of Supreme Court Rule 20.1.

Respectfully Submitted,



THOMAS COLAS CARROLL, ESQUIRE
Attorney for Petitioner

Dated: February 25, 1983

IN THE SUPREME COURT
OF THE UNITED STATES

LOUIS S. KALMAR, SR.,	:	
Petitioner	:	
VS.	:	UNITED STATES SUPREME COURT NO. 82-878
UNITED STATES OF AMERICA,	:	
Respondent	:	

AFFIDAVIT OF COUNSEL

COMMONWEALTH OF PENNSYLVANIA: SS
COUNTY OF PHILADELPHIA :

THOMAS COLAS CARROLL, ESQUIRE, being duly sworn according to law, deposes and says:

1. I am a member of the bar of the Supreme Court of the United States.

2. I represent the petitioner, Louis S. Kalmar.

3. I make the within Affidavit in support of the accompanying Petitioner's Motion for Waiver of Time Requirement of Supreme Court Rule 20.1.

4. A Petition for Rehearing in the United States Court of Appeals for the Third Circuit was denied on September 24, 1982, thereby making this Petition for Writ of Certiorari due for filing on or before November 23, 1982 under Rule 20 of the United States Supreme Court.

5. On November 19, 1982 I delivered to Pennsylvania Appellate Printing Company, 177 Ryan Street, South Plainfield, New Jersey 07080. The typewritten Petition for Certiorari to be typeset and delivered to the United States Supreme Court on November 22, 1982.

6. On Saturday, November 20, 1982 the printer typeset the Petition and galley proofs were delivered to me on Monday morning, November 22, 1982. I corrected typographical errors via

the telephone. The printer advised that the final printing of the Petition could not be accomplished until November 23, 1982 and the Petition would be timely filed on that date.

7. On November 23, 1982 I spoke with the printer at approximately 11:00 a.m. who advised that the Petition would be mailed to the United States Supreme Court at approximately 2:00 p.m. and would thereby be timely filed under Rule 28.2.

8. To my great regret, I told the printer that I was uncomfortable with mailing the Petition and would prefer to see it hand delivered. After further discussion with the printer, I acquiesced in the arrangement that it be mailed.

9. At approximately 3:00 p.m. on November 23, 1982, the printer called back and advised that since I had expressed displeasure at the Petition being mailed the printer had elected to use a courier to hand deliver the Petition and it would be delivered to the courier very shortly for hand delivery in Washington before midnight.

10. On November 24, 1982 the Clerk of the United States Supreme Court telephoned my office to advise that the Petition had been received and requested that I forward the $200.00 docketing fee which I did that afternoon. I assumed, without asking, that the Petition had been received on the 23rd.

11. On November 26, 1982 I spoke with Ms. McFarland of the Clerk's Office to obtain the docket number on the case. Ms. McFarland advised me that her records showed that the Petition had been left with the guard at the Supreme Court building at 12:23 a.m. on November 24 and that the filing date would be as of November 24. Ms. McFarland graciously delayed assigning a filing date to the Petition until I could determine what had happened.

12. As it developed, the Clerk's records were correct and the Petition was delivered some 23 minutes late due to the breakdown of the courier's truck which was subsequently confirmed to me by copy of a letter dated December 8, 1982 from the courier

which is attached to this Affidavit as Attachment "1".

13. Attached to this Affidavit as Attachment "2" is a copy of the "Proof of Service" showing that the service copies of the Petition were mailed by Appellate Printing Company on November 23, 1982.

14. Thus, if the printer and I had followed the original concept of mailing not only the service copies but the filing Petition as well, the Petition would have been deemed timely filed under Rule 28.2.

15. My client is completely faultless in this matter, having relied on me and the printer to ensure that the Petition was timely filed.

16. I believe that this case presents an appropriate matter for waiver of the filing time because although the Petition was not filed until November 24, 1982, the receipt date i.e. November 24, 1982 was actually earlier than the receipt date would have been had the Petition been mailed under Rule 28.2. In these circumstances, I submit that favorable reconsideration should be given to our request for waiver.

Respectfully Submitted,

THOMAS COLAS CARROLL, ESQUIRE
Attorney for Petitioner

SWORN TO AND SUBSCRIBED TO
BEFORE ME THIS 25th DAY
OF February, 1983.

NOTARY PUBLIC

IN THE SUPREME COURT
OF THE UNITED STATES

LOUIS S. KALMAR, SR.,	:	
	:	
Petitioner	:	
	:	UNITED STATES SUPREME
VS.	:	COURT NO. 82-878
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent	:	

PROOF OF SERVICE

Undersigned counsel, a member of the bar of the United States Supreme Court, hereby certifies that on the 25th day of February, 1983 I caused service, by United States Mail, first class, postage pre-paid, of a copy of Petitioner's Motion for Waiver of Time Requirement of Supreme Court Rule 20.1 upon the Solicitor General of the United States, United States Department of Justice, Washington, D.C.

THOMAS COLAS CARROLL, ESQUIRE
Attorney for Petitioner

Exhibit "A"

LEGAL · FINANCIAL · INSTITUTIONAL & CORPORATE PRINTERS

Appellate Printing Co., Inc.

February 3, 1983

Thomas Carroll, Esq.
One Independence Mall
615 Chestnut St., Suite 1206
Phila., PA 19106

RE: Kalmar vs US

Dear Mr. Carroll:

Enclosed is a copy of a letter from B & D Courier Systems giving details of why they made delivery late and also a copy of the Proof of Service.

I am sorry that you haven't received this information as yet. I was under the impression that this matter had been taken care of.

If we can be of any further help, please contact us.

Very truly yours,

APPELLATE PRINTING CO., INC.

Joan Balon

Joan Balon,
Credit Manager

enc.

Attachment "1(a)"

1 WORLD TRADE CENTER • SUITE 7967
NEW YORK, NY 10048
(212) 480-9180

1 PLAZA PLACE NE
ST. PETERSBURG, FL 33701
(813) 823-1258

177 RYAN STREET
SOUTH PLAINFIELD, NJ 07080
(201) 753-0200

1518 WALNUT STREET
PHILADELPHIA, PA 19102
(215) 545-1707

BND courier systems
EASTERN

BND Courier Systems
373 Fifth Avenue
New York, NY 10016
212-962-2350
800-223-1282
Washington:
202-638-3470

Air Courier
Motor Courier
Foot Courier
Time Service

Symbol for BND's
City to City
Package Shuttle Service

December 8, 1982

Appellate Printing
177 Ryan Street
S. Plainfield, N.J.

Att: Mr. Andy Ferguson

Dear Andy,

On November 23, 1982 I made a pick-up from Appellate Printing in S. Plainfield, N.J. going to the Supreme Court in Washington D.C.. The Pick-up was made at Approxamely 6:55pm. The traffic at the Baltimore Harbor tunnel was at a virtual standstill due to an accident and my vechile overheated and popped a hose. I had to find a repair station and wait while they attached a new hose to my car. As a result, I arrived in Washington D.C at 12:22 am.

Darryl Holmes

Darryl Holmes

Attachment "1(b)"

Best Copy Available

Job #1030731

Thomas C. Carroll, Esq.
CARROLL & CARROLL, ESQS.
615 Chestnut Street
Independence Mall, Suite 1306
Philadelphia, PA 19106
(215) 925-4100

PROOF OF SERVICE FORM
New Jersey Appellate Printing Co.
177 Ryan Street
South Plainfield, N. J. 07080
(201) 753-0200

IN THE

Supreme Court of the United States

DOCKET NO.

Kalmar

vs.

United States of America

STATE OF NEW JERSEY)
: ss.
COUNTY OF MIDDLESEX)

PROOF OF SERVICE

I, RONALD D. ANZIVINO, of full age, being duly sworn according to law upon my oath, depose and say:

1. I am the President of New Jersey Appellate Printing Co., Inc., a New Jersey corporation, the principal place of business of which is located at 177 Ryan Street, South Plainfield, New Jersey.

2. On the 23rd day of November 1982, at [illegible] South Plainfield, New Jersey, a package containing 40 copies Petition for Certiorari to:

SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, D.C. 20530

3 copies Petition for Writ of Certiorari

DELIVERED by HAND

first class mail, addressed:

Solicitor General
Rm. 5143
Dept. of Justice, Rm. 5614
Washington, D.C. 20530

Seymour Margulies, Esq.
921 Bergen Avenue
Jersey City, N.J. 07306

Frank J. Marine, Esq.
Criminal Division
App Unit, Room
U.S. Dept. of Justice
P.O. Box [illegible] Franklin Sta.
Washington, D.C. 20530

Sworn and subscribed to
before me this day
of 1982

MARY ANN JONES
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Oct. 8, 1987

Ronald D. Anzivino
RONALD D. ANZIVINO

Attachment "2"